Filed on behalf of EMC Corporation

By: Peter Dichiara, Reg. No. 38,005
David L. Cavanaugh, Reg. No. 36,476
WILMER CUTLER PICKERING HALE AND DORR LLP
peter.dichiara@wilmerhale.com
david.cavanaugh@wilmerhale.com
Tel.: 202-663-6025
Fax: 202-663-6363

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMC CORPORATION,
Petitioner

v.

Patent Owner of
U.S. Patent No. 7,945,544 to Farber et al.

IPR Case No. IPR2013-00084

REPLY DECLARATION OF JASON S. SADOFSKY

I, Jason S. Sadofsky, declare as follows:

1. I have been asked by Petitioner to provide this Declaration regarding certain factual issues that are common to four Inter Partes Review proceedings, Case Nos. IPR2013-00084, -00085, -00086 and -00087 ("IPR Proceedings"). I previously submitted a declaration (EMC 1077) in these proceedings.

2. The testimony I provide in this Declaration is based on my personal knowledge of the relevant facts.

I. Background

3. I have reviewed the Declaration of Todd M. Thompson dated July 19, 2013 (PersonalWeb 2014) submitted by PersonalWeb Technologies LLC ("Patent Owner") as well as the transcript of Mr. Thompson's September 13, 2013 deposition (EMC 1082).

4. I understand that Mr. Thompson's testimony in the IPR Proceedings involves certain steps he took in 2013 using a personal computer running Windows XP to access file FWKCS122.REF, which contains the text of the Frederick W. Kantor FWKCS™ Contents-Signature System Version 1.22 user manual (the "Kantor Reference," EMC 1004), which is dated August 10, 1993.

5. I understand that Mr. Thompson currently works as litigation support staff for Patent Owner's counsel, does not have a college degree, never obtained or accessed shareware through a Bulletin Board System ("BBS"), and attempted to

access the Kantor Reference (EMC 1004) using the command line interpreter of the 32-bit Windows XP operating system (released in 2001), rather than a 16-bit MS-DOS operating system in use during the 1993 or 1994 timeframe. *See, e.g.*, Thompson Tr. 5-6, 13-14 (EMC 1082); Thompson Decl. ¶ 6 (PersonalWeb 2014).

6. As mentioned in my prior testimony in these IPR Proceedings, I was a BBS user in the 1980s-1990s, I have more than 25 years of experience with obtaining, accessing, and archiving software, shareware, and freeware first published and released to the public on BBSs in the 1980s and 1990s, and related to this work, I directed the film, *The BBS Documentary* (initially released in May 2005). *See, e.g.*, Sadofsky Decl. 2-5 (EMC 1077). As a result, I am knowledgeable about the general mechanics of various computer systems, programs, and file types that were widely available and accessible during the 1980s and 1990s.

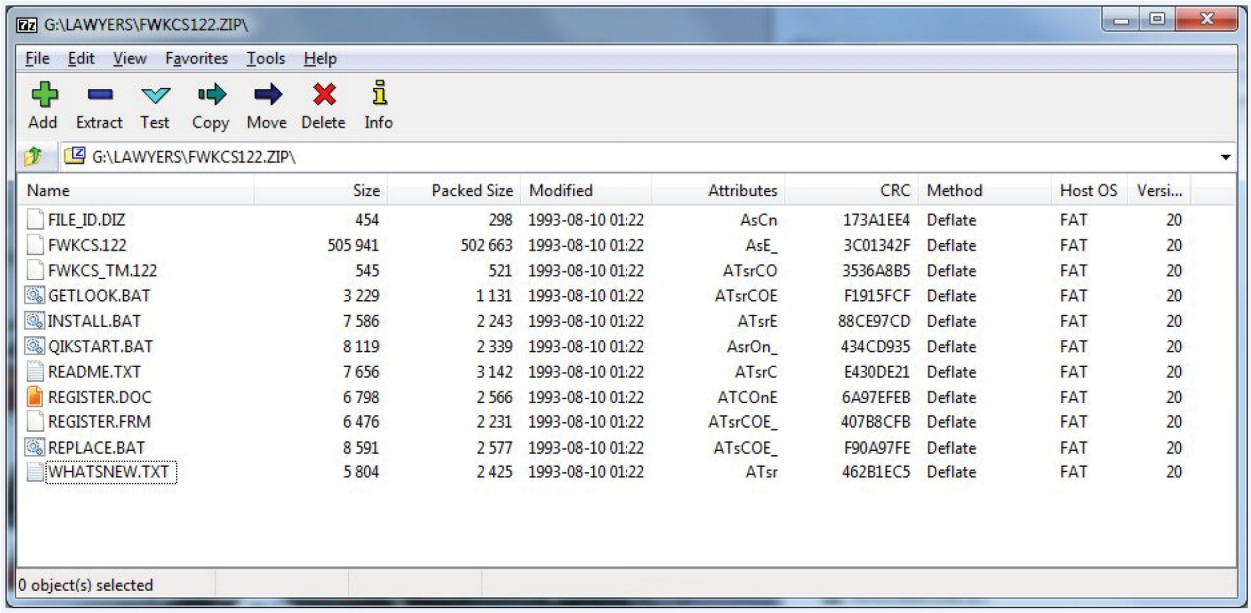
7. I am also knowledgeable about the modern day programs that emulate these antiquated systems. As mentioned during my deposition, one such program I have known and used during the course of my archival work is "DOSBox" — a widely available emulator that imitates most of the functionality of an MS-DOS machine from the 1990s. *See, e.g.*, Sadofsky Tr. 7 (PersonalWeb 2013).

II. README.TXT

8. Based on Mr. Thompson's deposition testimony, I understand that while trying to access the Kantor Reference (EMC 1004), Mr. Thompson did not use any MS-DOS emulator, despite his being present at my deposition where I mentioned several times that I had used "DOSBox" to access the Kantor Reference. *See* Thompson Tr. 40-42 (EMC 1082); Sadofsky Tr. 47-49, 55-56 (PersonalWeb 2013).

9. I also understand from Mr. Thompson's deposition testimony that he reviewed but chose not to follow the brief instructions presented in the README.TXT file (EMC 1079) (*see, e.g.*, Thompson Tr. 32-35; EMC 1082), which appears once the FWKCS122.ZIP file containing the Kantor Reference is unzipped.

10. A screenshot depicting the contents of the FWKCS122.ZIP file that I obtained from my copy of the *Simtel MSDOS Archive*, October 1993 Edition, Walnut Creek CD-ROM (the "October 1993 Walnut Creek CD-ROM") (EMC 1048) is shown below:


G:\LAWYERS\FWKCS122.ZIP\
File Edit View Favorites Tools Help
Add Extract Test Copy Move Delete Info
G:\LAWYERS\FWKCS122.ZIP\
Name Size Packed Size Modified Attributes CRC Method Host OS Versi...
FILE_ID.DIZ 454 298 1993-08-10 01:22 AsCn 173A1EE4 Deflate FAT 20
FWKCS.122 505 941 502 663 1993-08-10 01:22 AsE_ 3C01342F Deflate FAT 20
FWKCS_TM.122 545 521 1993-08-10 01:22 ATsrCO 3536A8B5 Deflate FAT 20
GETLOOK.BAT 3 229 1 131 1993-08-10 01:22 ATsrCOE F1915FCF Deflate FAT 20
INSTALL.BAT 7 586 2 243 1993-08-10 01:22 ATsrE 88CE97CD Deflate FAT 20
QIKSTART.BAT 8 119 2 339 1993-08-10 01:22 AsrOn_ 434CD935 Deflate FAT 20
README.TXT 7 656 3 142 1993-08-10 01:22 ATsrC E430DE21 Deflate FAT 20
REGISTER.DOC 6 798 2 566 1993-08-10 01:22 ATCOnE 6A97EFEB Deflate FAT 20
REGISTER.FRM 6 476 2 231 1993-08-10 01:22 ATsrCOE_ 407B8CFB Deflate FAT 20
REPLACE.BAT 8 591 2 577 1993-08-10 01:22 ATsCOE_ F90A97FE Deflate FAT 20
WHATSNEW.TXT 5 804 2 425 1993-08-10 01:22 ATsr 462B1EC5 Deflate FAT 20
0 object(s) selected

11. This screenshot matches the content of the screenshot at paragraph 5 of the Thompson Declaration (PersonalWeb 2014). Note that all 11 files contained within the FWKCS122.ZIP file are dated August 10, 1993. The README.TXT file is the seventh file in the directory. A true and correct printout of the contents of the README.TXT file is attached as EMC Exhibit 1079.

12. Page 1 of the README.TXT file (EMC 1079) states, "This zipfile, FWKCS122.ZIP contains the FWKCS(TM) Contents_Signature System, Version 1,22, including executable assembly_language programs, **documentation,** and supporting human_interface programs, with additional programs to carry out the installation procedures" (emphasis added).

13. The README.TXT file provides clear instructions for installing FWKCS122 software, and also provides simple instructions for **accessing**

FWKCS122-related "literature" *without* ever installing the software using an automatic setup program called "GETLOOK":

```
Automatic setup programs are available for these procedures:

  INSTALL  - versatile, for new installation, can search huge file collection.
  REPLACE  - for replacing a working FWKCS system, version 1.12 or later.
  QIKSTART - quick, does not search your file collection; this provides a
       convenient way to see system structure, programs, and literature.
  GETLOOK  - only brings out the programs and literature for remote Lookup.

-------------------------------------------------------------------------------
As a BBS user, would you like to get the remote Lookup capability to help you
find files and avoid duplicate uploads?  If you do not wish to install the
FWKCS system on your own computer at this time, you can do these two steps:

            PKUNZIP FWKCS122.ZIP <enter>, and then  GETLOOK <enter>.
```

EMC 1079 at 1 (emphasis added).

14. I understand from Mr. Thompson's deposition and declaration testimony that he reviewed but chose not to follow at least the following preliminary instructions presented in the README.TXT file (EMC 1079 at 2) until re-instructed to do so during the installation process (*i.e.*, the process of executing the INSTALL.BAT file):

- Install Phil Katz's PKUNZIP, version 2.04g or later; and
- Save the PKUNZIP.EXE and FWKSC122.ZIP files in the same directory as INSTALL.BAT.

See, e.g., Thompson Tr. 32-35 (EMC 1082); Thompson Decl. 4-6 (PersonalWeb 2014). He also did not install the programs recommended in the README.TXT file: McAfee's SCAN and Vernon Buerg's LIST. EMC 1079 at 2. Based on my

experience, all of these utility programs were common shareware programs that were used by persons who used and downloaded software from BBSs in the 1993/1994 timeframe.

15. In the following sections, I provide a description of the steps that I took to access the Kantor Reference (EMC 1004) after unzipping the FWKCS122.ZIP file, reviewing the README.TXT file (EMC 1079), and following the instructions presented in the README.TXT file including but not limited to installing Phil Katz's PKUNZIP and PKZIP (version 2.04g or later), McAfee's SCAN, and Vernon Buerg's LIST. I was able to download all of these shareware programs from the same October 1993 Walnut Creek CD-ROM where I found the FWKCS122.ZIP file (EMC 1048). To mimic the operating system that would have been in use in 1993/1994, I performed these steps using DOSBox v.0.74 – a program that emulates much of the functionality of an Intel x86 PC

running the MS-DOS operating system from the 1993/1994 era.[1] To avoid any potential Y2K bugs or shareware timing restrictions, I set the date on my Windows 7 PC running the DOSBox emulator to November 1, 1993, to recreate as much as possible the actual experience of a user attempting to access the Kantor Reference in 1993.

16. I did observe, however, that DOSBox does not preserve the original date/time stamp for files unzipped in the DOSBox emulator using PKUNZIP. Accordingly, the screenshots in the following sections show file modification dates of November 1, 1993 (the date that I set my system clock for this exercise), rather than the original date of August 10, 1993 (the dates shown on the files when

[1] For a description of the DOSBox program, see http://www.dosbox.com/wiki/Main_Page (EMC 1081 at 1). As the developers of the DOSBox program explain on that webpage, "It is still quite rudimentary and lacks many of the features found in MS-DOS, but it is sufficient for installing and running most DOS games." So while the performance using DOSBox may not be identical to the experience a user would have had in 1993 running the files contained in the FWKCS122.ZIP file on a vintage Intel x86 PC running the MS-DOS operating system, based on my experience with such systems, it is substantially similar, unless I expressly note differently below.

unzipped outside of DOSBox). *See* ¶ 10 above and Thompson Decl. ¶ 5 (PersonalWeb 2014). Apparently, this is a known issue with the current version of DOSBox.[2] I observed no other issues relating to my use of the DOSBox emulator to access the Kantor Reference (EMC 1004).

III. GETLOOK.BAT

17. As displayed in the excerpt in paragraph 13 above, **before instructing users on how to install the FWKCS122 software**, the README.TXT file provides users who "**do not wish to install the FWKCS system**" with simple two-step instructions for accessing the system's "**literature**":

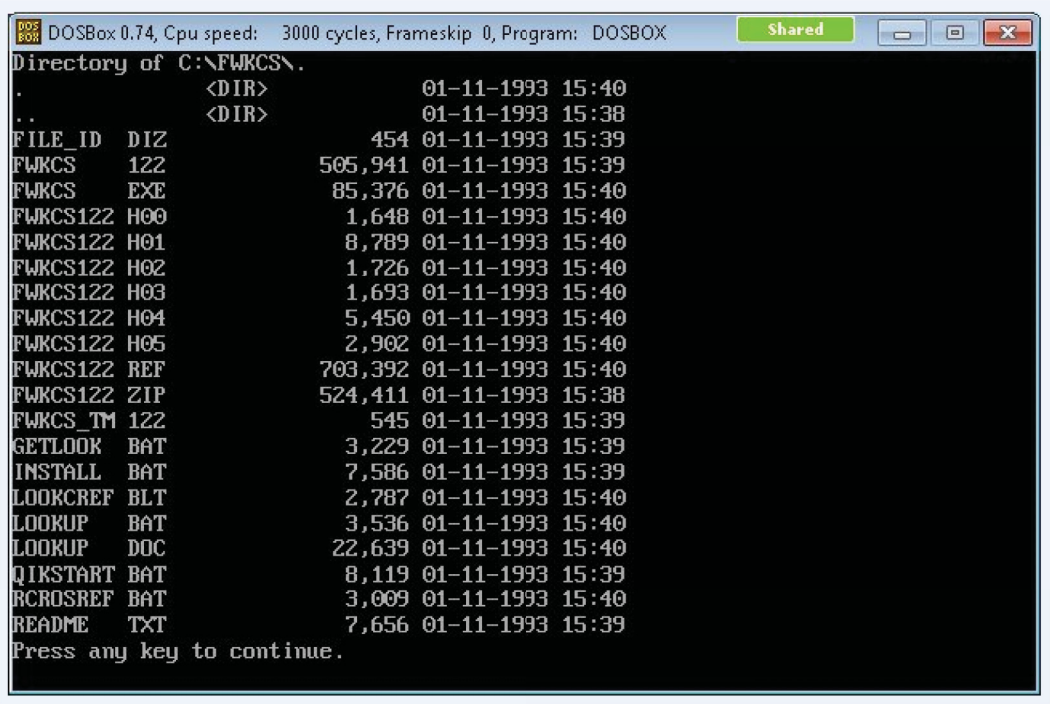
> ***First***, enter command "PKUNZIP FWKCS122.ZIP" (unzips ZIP file).
>
> ***Second***, enter command "GETLOOK" (executes "GETLOOK.BAT" file).

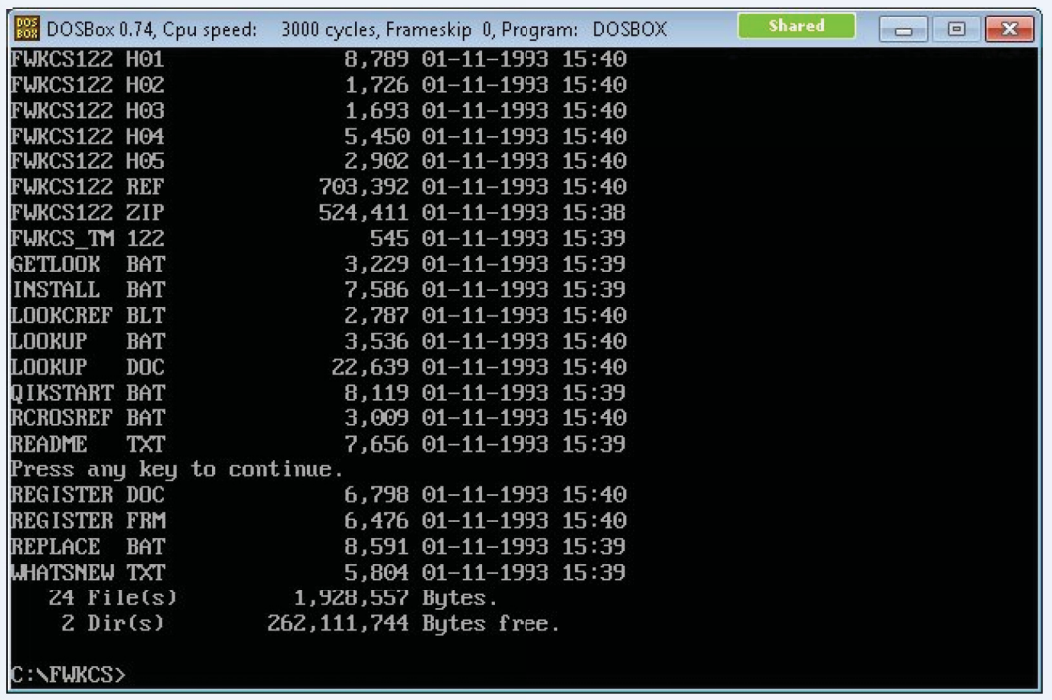
---

[2] *See, e.g.*, http://www.vogons.org/viewtopic.php?f=33&t=18242&start=20#p131754 (posting on forum linked to http://www.dosbox.com/ noting that "when you unzip files with PKUNZIP using ykhwong's build, the extracted files retain their modification date/time stamps, [but] with the official build the stamps are set to the current date/time") (EMC 1080 at 14).

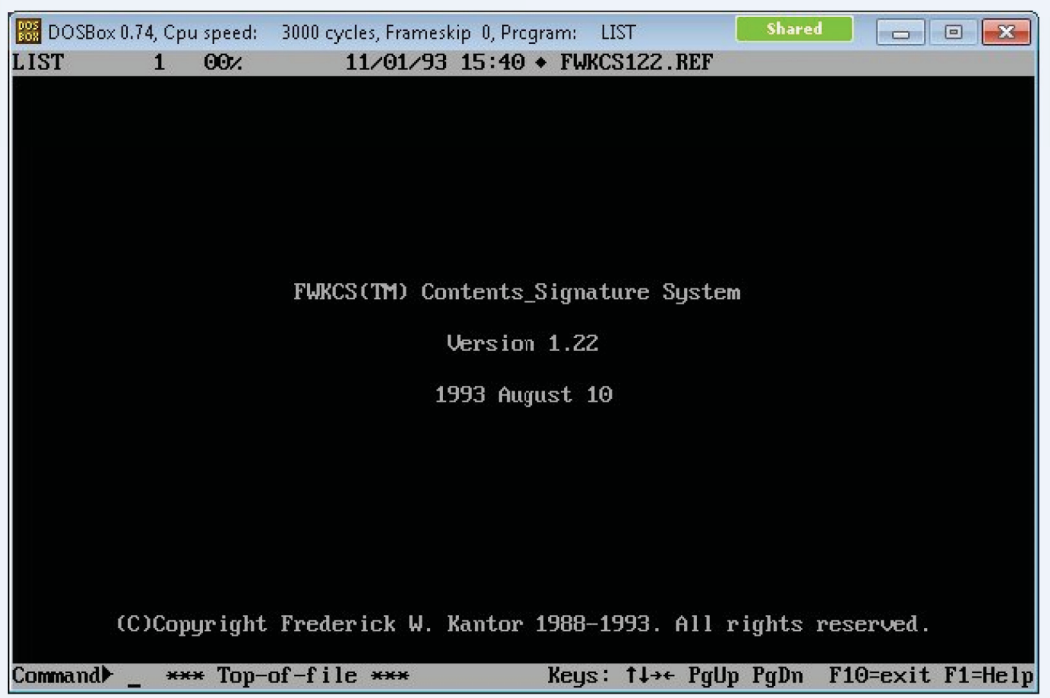
EMC 1079 at 1 (emphasis added).

18. Using the system and software described above, I followed these two steps. After entering the command "GETLOOK" as instructed, I passed through several different screens, each of which prompted me to "[p]ress any key to continue." After the third screen, the system directory listed 24 files housed within the FWKCS122.ZIP file over the following two screens:





19. The third column in this directory listed each file's size (in bytes), and I noticed that the single largest file was entitled "FWKCS122.REF," and was the only file in this list with a ".REF" extension. Although file extensions were not standardized in MS-DOS in the 1993/1994 timeframe like they are today, the term .REF suggested to me that it may be a "reference" or documentation file as promised in the README.TXT file (EMC 1079). I accessed this file by entering the command "list FWKCS122.REF" (after having installed "Vernon Buerg's LIST," as instructed in the README.TXT). I then saw the following screen displaying the cover page of the Kantor Reference (EMC 1004), the entirety of which could be viewed utilizing the "PgUp" and "PgDn" functions:

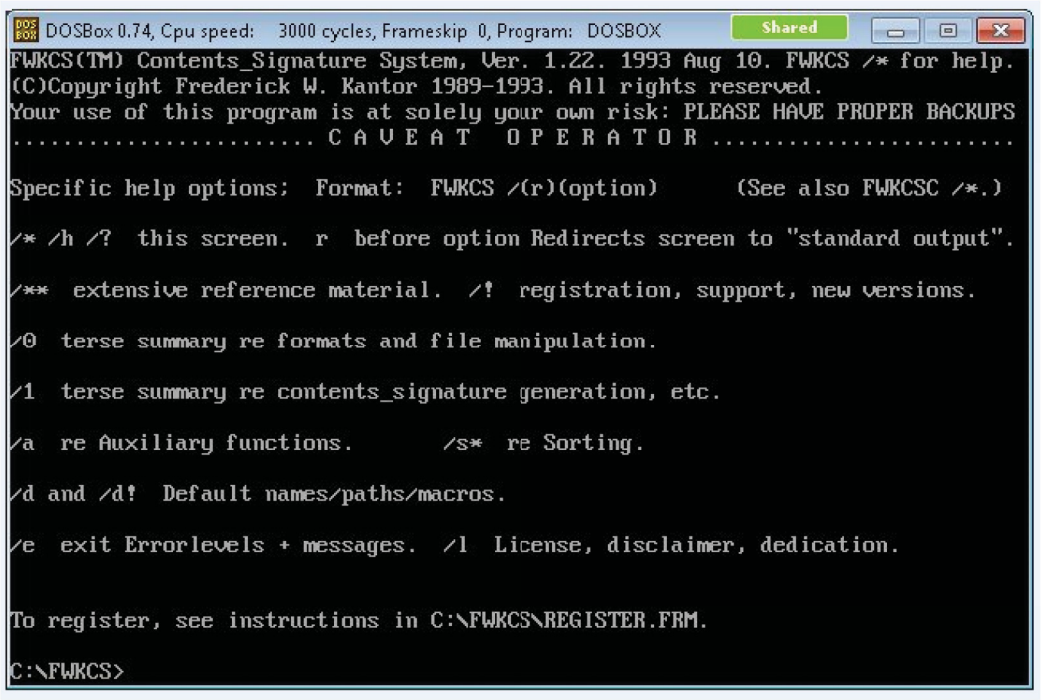

DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Prcgram: LIST
Shared
LIST 1 00% 11/01/93 15:40 ◆ FWKCS122.REF
FWKCS(TM) Contents_Signature System
Version 1.22
1993 August 10
(C)Copyright Frederick W. Kantor 1988-1993. All rights reserved.
Command▶ _ *** Top-of-file *** Keys: ↑↓→← PgUp PgDn F10=exit F1=Help

20. It was not difficult to access the Kantor Reference (EMC 1004) using the GETLOOK.BAT automatic setup program by following the directions in the README.TXT file (EMC 1079). As noted above, all of the recommended utility programs were also distributed on my October 1993 Walnut Creek CD-ROM (EMC 1048). Apparently, Mr. Thompson did not follow these instructions for bringing out the product literature for Lookup.

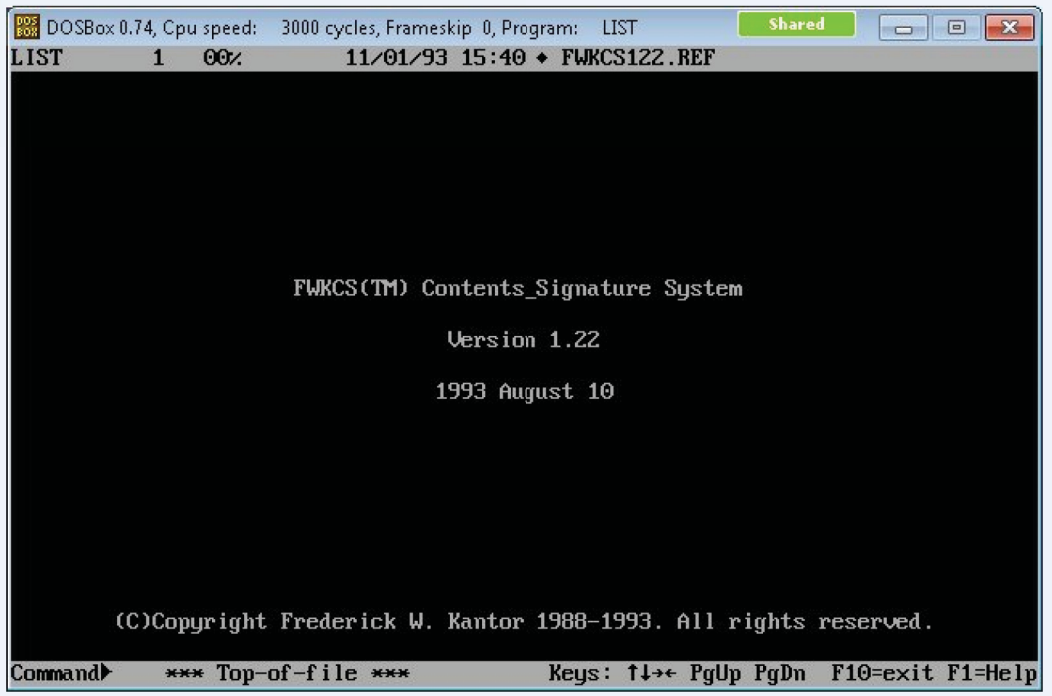
IV. FWKCS122 Start Screen and In-Program Help

21. I then exited the screen that displayed the Kantor Reference (EMC 1004) to see if there was another way I might be able to view it. I saw that there was an executable (.EXE) program in the directory called FWKCS.EXE, so I ran the program by typing "FWKCS" on the command line, which returned the

following "start" or "help" screen for "FWKCS™ Contents_Signature System, Ver. 1.22":


DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Program: DOSBOX
Shared
FWKCS(TM) Contents_Signature System, Ver. 1.22. 1993 Aug 10. FWKCS /* for help.
(C)Copyright Frederick W. Kantor 1989-1993. All rights reserved.
Your use of this program is at solely your own risk: PLEASE HAVE PROPER BACKUPS
..... C A V E A T O P E R A T O R .....
Specific help options; Format: FWKCS /(r)(option) (See also FWKCSC /*.)
/* /h /? this screen. r before option Redirects screen to "standard output".
/** extensive reference material. /! registration, support, new versions.
/0 terse summary re formats and file manipulation.
/1 terse summary re contents_signature generation, etc.
/a re Auxiliary functions. /s* re Sorting.
/d and /d! Default names/paths/macros.
/e exit Errorlevels + messages. /l License, disclaimer, dedication.
To register, see instructions in C:\FWKCS\REGISTER.FRM.
C:\FWKCS>

22. A depiction of the contents of this screen can also be found in the Kantor Reference itself. *See* Kantor at 156 (EMC 1004). I noticed on the third line from the header a reference to "**extensive reference material**." I accordingly followed the on-screen instructions and typed "FWKCS /**" on the command line, which returned the following familiar screen (the cover page of the Kantor Reference, EMC 1004):

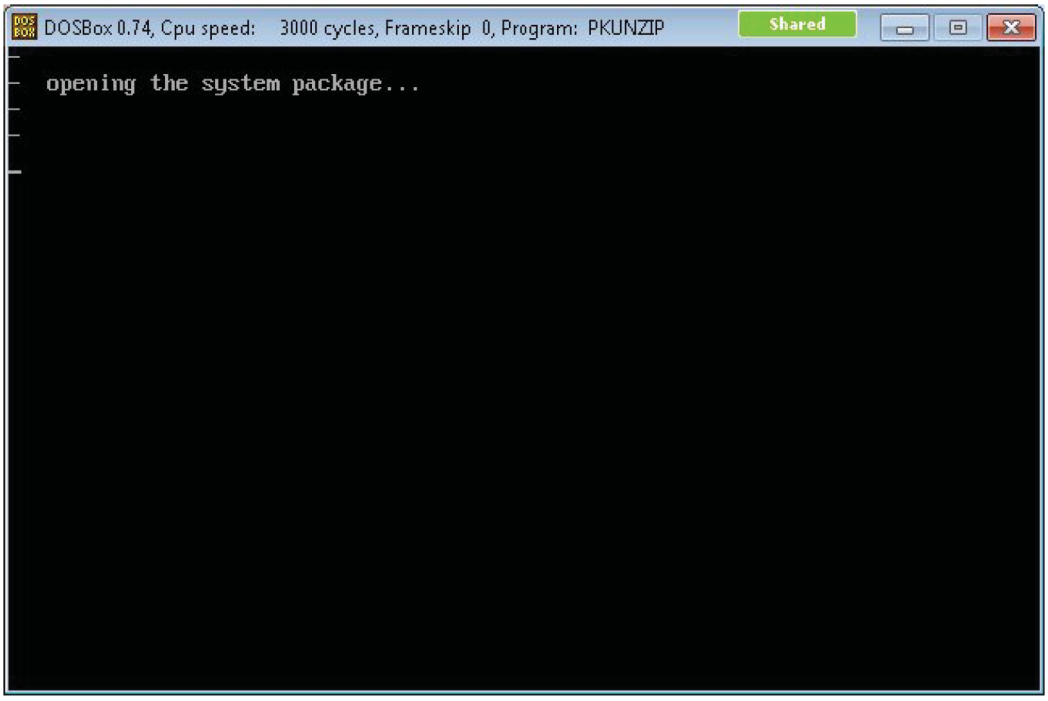

DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Program: LIST
Shared
LIST 1 00% 11/01/93 15:40 ♦ FWKCS122.REF
FWKCS(TM) Contents_Signature System
Version 1.22
1993 August 10
(C)Copyright Frederick W. Kantor 1988-1993. All rights reserved.
Command▶ *** Top-of-file *** Keys: ↑↓→← PgUp PgDn F10=exit F1=Help

V. Installing FWKCS122

23. I understand that Mr. Thompson was unable to actually install the FWKCS software. In particular, he received an error message when he executed the INSTALL.BAT program and selected "option 1" from the installation menu. *See* Thompson Decl. ¶¶ 17-18 (PersonalWeb 2014); Thompson Tr. 54-56 (EMC 1082).

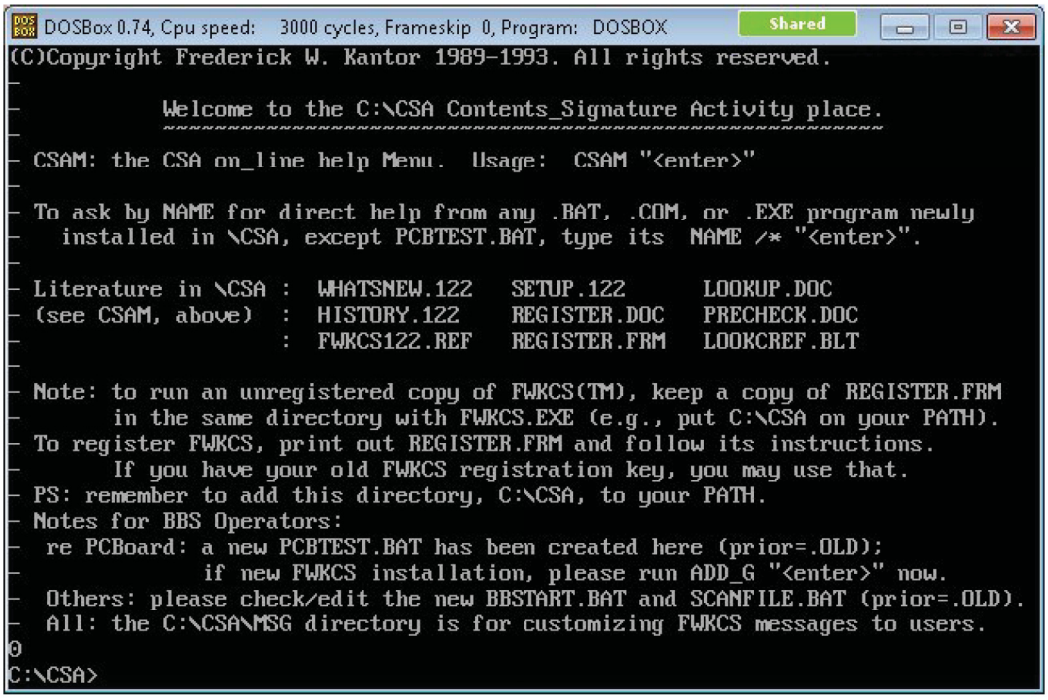
24. Following the instructions contained in the README.TXT file (EMC 1079) and using the utility software and DOSBox emulator as described above, I did not receive any error messages when I executed the INSTALL.BAT file and selected "option 1."

25. After typing "INSTALL," and then moving through a series of screens and selecting "option 1" just as Mr. Thompson did,[3] I did not see any of the error messages that Mr. Thompson observed. Thompson Decl. ¶ 18 (PersonalWeb 2014). Instead, I saw the following screen:

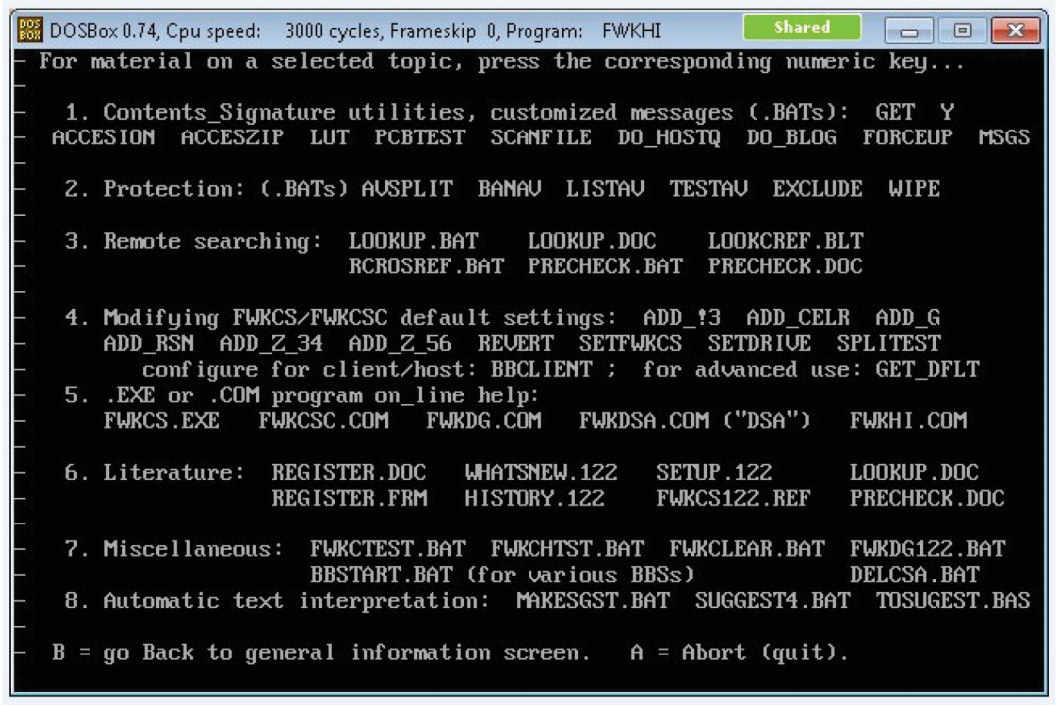


[3] These screens matched the content of the screenshots in paragraphs 7-9 and 13-17 of the Thompson Declaration (PersonalWeb 2014).

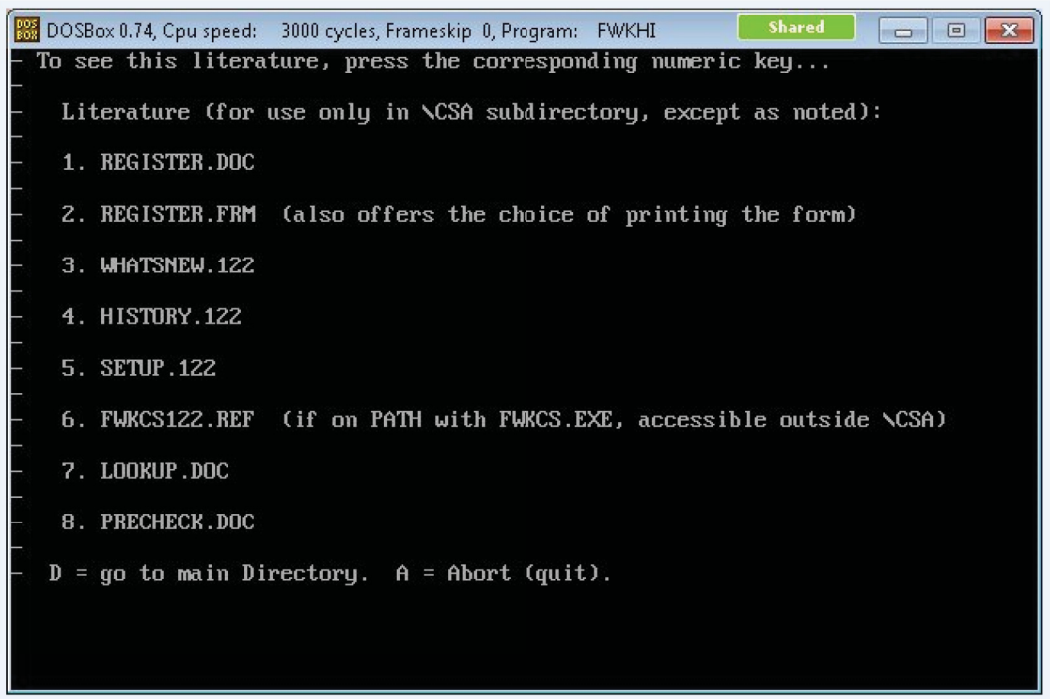
26. Some additional installation status messages displayed briefly, and then I saw the following screen:


DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Program: DOSBOX
Shared
(C)Copyright Frederick W. Kantor 1989-1993. All rights reserved.
Welcome to the C:\CSA Contents_Signature Activity place.
CSAM: the CSA on_line help Menu. Usage: CSAM "<enter>"
To ask by NAME for direct help from any .BAT, .COM, or .EXE program newly
installed in \CSA, except PCBTEST.BAT, type its NAME /* "<enter>".
Literature in \CSA : WHATSNEW.122 SETUP.122 LOOKUP.DOC
(see CSAM, above) : HISTORY.122 REGISTER.DOC PRECHECK.DOC
: FWKCS122.REF REGISTER.FRM LOOKCREF.BLT
Note: to run an unregistered copy of FWKCS(TM), keep a copy of REGISTER.FRM
in the same directory with FWKCS.EXE (e.g., put C:\CSA on your PATH).
To register FWKCS, print out REGISTER.FRM and follow its instructions.
If you have your old FWKCS registration key, you may use that.
PS: remember to add this directory, C:\CSA, to your PATH.
Notes for BBS Operators:
re PCBoard: a new PCBTEST.BAT has been created here (prior=.OLD);
if new FWKCS installation, please run ADD_G "<enter>" now.
Others: please check/edit the new BBSTART.BAT and SCANFILE.BAT (prior=.OLD).
All: the C:\CSA\MSG directory is for customizing FWKCS messages to users.
C:\CSA>

27. Since this screen stated that an "on_line help Menu" could be accessed with the command CSAM, I then typed "CSAM" in the command line, and saw the following screen:


DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Program: FWKHI
Shared
For material on a selected topic, press the corresponding numeric key...
1. Contents_Signature utilities, customized messages (.BATs): GET Y
ACCESION ACCESZIP LUT PCBTEST SCANFILE DO_HOSTQ DO_BLOG FORCEUP MSGS
2. Protection: (.BATs) AVSPLIT BANAV LISTAV TESTAV EXCLUDE WIPE
3. Remote searching: LOOKUP.BAT LOOKUP.DOC LOOKCREF.BLT
RCROSREF.BAT PRECHECK.BAT PRECHECK.DOC
4. Modifying FWKCS/FWKCSC default settings: ADD_!3 ADD_CELR ADD_G
ADD_RSN ADD_Z_34 ADD_Z_56 REVERT SETFWKCS SETDRIVE SPLITEST
configure for client/host: BBCLIENT ; for advanced use: GET_DFLT
5. .EXE or .COM program on_line help:
FWKCS.EXE FWKCSC.COM FWKDG.COM FWKDSA.COM ("DSA") FWKHI.COM
6. Literature: REGISTER.DOC WHATSNEW.122 SETUP.122 LOOKUP.DOC
REGISTER.FRM HISTORY.122 FWKCS122.REF PRECHECK.DOC
7. Miscellaneous: FWKCTEST.BAT FWKCHTST.BAT FWKCLEAR.BAT FWKDG122.BAT
BBSTART.BAT (for various BBSs) DELCSA.BAT
8. Automatic text interpretation: MAKESGST.BAT SUGGEST4.BAT TOSUGEST.BAS
B = go Back to general information screen. A = Abort (quit).

28. Topic "6. Literature" listed several files including "FWKCS122.REF" (the Kantor Reference, EMC 1004). When I entered "6", I observed the following screen:


DOSBox 0.74, Cpu speed: 3000 cycles, Frameskip 0, Program: FWKHI
Shared
To see this literature, press the corresponding numeric key...
Literature (for use only in \CSA subdirectory, except as noted):
1. REGISTER.DOC
2. REGISTER.FRM (also offers the choice of printing the form)
3. WHATSNEW.122
4. HISTORY.122
5. SETUP.122
6. FWKCS122.REF (if on PATH with FWKCS.EXE, accessible outside \CSA)
7. LOOKUP.DOC
8. PRECHECK.DOC
D = go to main Directory. A = Abort (quit).

29. When I entered "6" again for "FWKCS122.REF," I was once again returned to the complete text of the Kantor Reference (EMC 1004) that I could page through.

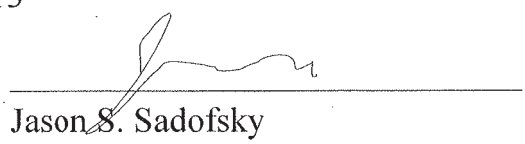
30. Based upon my inspection of the Kantor Reference (EMC 1004) and the files that were included in the FWKCS122.ZIP file contained in my October 1993 Walnut Creek CD-ROM (EMC 1048), I believe there were a variety of ways that anyone viewing or using the .zip file could have accessed the Kantor

Reference in the 1993/1994 timeframe. There were explicit instructions on how to access the documentation/literature that I was able to follow without difficulty. I saw no evidence that the author of the Kantor Reference attempted to conceal it in the .zip file. To the contrary, there were instructions on how to retrieve the accompanying product literature using a variety of methods.

31. In signing this declaration, I recognize that the declaration will be filed as evidence in a contested case before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

32. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on September 30, 2013



Jason S. Sadofsky
New York, NY